

§ 1206.1-6

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alter the time limitations for the delivery of papers or other procedures set forth in this section.

(f) The results of the proceeding and any measure taken thereafter by ACTION pursuant to this part shall be fully binding upon the recipient and all agencies whether or not they actually participated in the hearing.

(g) A recipient may waive a hearing by notice to the responsible ACTION official in writing and submit written information and argument for the record. Such material shall be submitted to the responsible ACTION official within a reasonable period of time to be fixed by him upon the request of the recipient. The failure of a recipient to request a hearing, or to appear at a hearing for which a date has been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of ACTION.

(h) The responsible ACTION official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

§ 1206.1-6 Time and place of termination hearings.

The termination hearing shall be held in Washington, DC, or in the appropriate Regional Office, at a time and place fixed by the responsible ACTION official unless he determines that the convenience of ACTION, or of the parties or their representatives, requires that another place be selected.

§ 1206.1-7 Termination hearing procedures.

(a) *General.* The termination hearing, decision, and any review thereof shall be conducted in accordance with the rules of procedure set forth in this section and §§ 1206.1-8 and 1206.1-9.

(b) *Presiding officer.* (1) The presiding officer at the hearing shall be the responsible ACTION official or, at the discretion of the responsible ACTION official, an independent hearing examiner designated as promptly as possible in accordance with section 3105 of title 5 of the United States Code. The presiding officer shall conduct a full and

fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown shall otherwise determine.

(2) After the notice described in paragraph (f) of this section is filed with the presiding officer, he shall not consult any person or party on a fact in issue unless on written notice and opportunity for all parties to participate. However, in performing his functions under this part the presiding officer may use the assistance and advice of an attorney designated by the General Counsel of ACTION or the appropriate Regional Counsel: *Provided*, That the attorney designated to assist him has not represented ACTION or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(c) *Presentation of evidence.* Both ACTION and the recipient are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (f) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) *Participation.* (1) In addition to ACTION, the recipient, and any agency which has a right to appear, the presiding officer in his discretion may permit the participation in the proceedings of such persons or organizations as he deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(2) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from

the presiding officer. This application, which shall be made as soon as possible after the notice of suspension or proposed termination has been received by the recipient, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(3) The presiding officer shall permit or deny such participation and shall give notice of his decision to the applicant, the recipient, and ACTION, and, in the case of denial, a brief statement of the reasons therefor: *Provided however*, That the presiding officer may subsequently permit such participation if, in his opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(4) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(e) *Filing*. All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(f) *Notice*. The responsible ACTION official shall send the recipient and any other party a written notice which states the time, place, nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held. The notice shall also identify with reasonable specificity the facts relied on as justifying termination and the ACTION requirements which it is contended the recipient has violated. The notice shall be filed and served not later than 10 days prior to the hearing and a copy thereof shall be filed with the presiding officer.

(g) *Notice of intention to appear*. The recipient and any other party which has a right or has been granted permission to participate in the hearing shall give written confirmation to ACTION

of its intention to appear at the hearing 3 days before it is scheduled to occur. Failing to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(h) *Form and date of service*. All papers and documents filed or sent to party shall be signed in ink by the appropriate party or his authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person: *Provided however*, That the effective date of the notice that there appear to be grounds which warrant terminating assistance shall be the date of its delivery or attempted delivery at the recipient's last known address as reflected in the records of ACTION.

(i) *Prehearing conferences*. Prior to the commencement of a hearing the presiding officer may, subject to the provisions of paragraph (b)(2) of this section, require the parties to meet with him or correspond with him concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(j) *Evidence*. Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and crossexamination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcription shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(k) *Depositions*. If the presiding officer determines that the interests of justice would be served, he may authorize the taking of depositions provided that all parties are afforded an opportunity to participate in the taking of the depositions. The party who

requested the deposition shall arrange for a transcript to be made of the proceedings and shall upon request, and at his expense, furnish all other parties with copies of the transcript.

(l) *Official notice.* Official notice may be taken of a public document, or part thereof, such as a statute, official report, decision, opinion or published scientific date issued by any agency of the Federal Government or a State or local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, or any other matter of established fact within the general knowledge of ACTION. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(m) *Proposed findings and conclusions.* After the hearing has concluded, but before the presiding officer makes his decision, he shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions. After considering each proposed finding or conclusion the presiding officer shall state in his decision whether he has accepted or rejected them in accordance with the provisions of § 1206.1-8(a).

§ 1206.1-8 Decisions and notices regarding termination.

(a) Each decision of a presiding officer shall set forth his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties, pursuant to § 1206.1-7(m). Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirement or requirements with which it is found that the recipient has failed to comply.

(b) The decision of the presiding officer may provide for continued suspension or termination of assistance to the recipient in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with

and will effectuate the purposes of the Act.

(c) If the hearing is held by an independent hearing examiner rather than by the responsible ACTION official, he shall make an initial decision, and a copy of this initial decision shall be mailed to all parties. Any party may, within 20 days of the mailing of such initial decision, or such longer period of time as the presiding officer specifies, file with the responsible ACTION official his written exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible ACTION official shall, within 20 days of the mailing of the exceptions, review the initial decision and issue his own written decision thereof, including the reasons therefore. The decision of the responsible ACTION official may increase, modify, approve, vacate, remit, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(d) Whenever a hearing is waived, a decision shall be made by the responsible ACTION official and a written copy of the final decision of the responsible ACTION official shall be given to the recipient.

(e) The recipient may request the Director to review a final decision by the responsible ACTION official which provides for the termination of assistance. Such a request must be made in writing within 15 days after the recipient has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the recipient requests such a review, the Director or his designee shall consider the reasons stated by the recipient for seeking the review and shall approve, modify, vacate or mitigate any sanction imposed by the responsible ACTION official or remand the matter to the responsible ACTION official for further hearing or consideration. The decision of the responsible ACTION official will be given great weight by the Director or his designee during the review. During the course of his review the Director or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. Pending the decision of the